

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 1545 of 2015 (O&M)

Date of Order: 14.12.2017

Indian Overseas Bank

..Appellant

Versus

M/s Crescent Engineering Corporation & Ors.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.S.Pasricha, Advocate, and
Ms. Ratika Attri, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

Defendant no.4, a nationalized bank, is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff-firm filed a suit claiming declaration that the plaintiff-firm is owner in possession of the suit land measuring 8 kanals and 15 marlas on the basis of sale deed dated 25.06.1997, registered on 09.07.1997. Plaintiff-firm further sought a declaration that sale deed dated 17.11.2000 with respect to land measuring 4 kanals and 8 marlas, which is part of land measuring 8 kanals and 15 marlas be declared illegal, null and void.

Further declaration was sought that defendants no.2 and 3 had no right to create any equitable mortgage in favour of defendant no.4 i.e., the appellant with respect to the property of the firm. Permanent injunction was also prayed for.

Plaintiff-firm claimed that it has purchased 8 kanals 15 marlas of land vide sale deed dated 25.06.1997, which was registered on 09.07.1997. Plaintiff-firm further claimed that after getting the credit

facility from State Bank of India had deposited the original sale deed. Plaintiff-firm further claimed that it has constructed a factory premises and started its business. Plaintiff-firm was having four partners i.e. Sher Singh, Kishan Chand, Vijay Kumar Chauhan and Arvind Dhumal.

It was further submitted that defendant no.1, namely, Amrik Singh was not a partner in the partnership firm. It was further claimed that Amrik Singh executed a sale deed on 17.11.2000 in favour of defendant no.2-Unpoorna Sales with respect to land measuring 4 kanals and 8 marlas out of land measuring 8 kanals 15 marlas purchased by the petitioner-firm, although he had no right. Thereafter, defendants no.2 and 3 mortgaged the land purchased from Amrik Singh with defendant no.4.

Defendants no.1 to 3 did not chose to contest the suit, so therefore, defendant no.4 was only left to contest the suit.

Defendant no.4 pleaded that the bank had extended the credit facility and in lieu thereof, defendants no.2 and 3 had mortgaged the property with defendant no.4-appellant. However, appellant could not prove on file that defendant no.1 was ever partner of plaintiff-firm.

Both the Courts after appreciating the evidence available on the file, decreed the suit filed by the plaintiff-firm. The Courts have gone to the extent of recording a finding that the bank officials did not take due care and caution while allowing mortgage of the land measuring 4 kanals and 8 marlas in favour of the appellant-bank.

I have heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellant has submitted that the suit

filed by the plaintiff-firm was not maintainable as ad-valorem court fee has not been affixed. He has further submitted that the Civil Court did not had jurisdiction to adjudicate upon such a dispute.

As far as the question of ad-valorem court fee is concerned, plaintiff-firm is not a executant of the sale deed dated 17.11.2000. A non-executant is simply to file a suit for declaration claiming that such sale deed would not effect its rights. A non-executant is nor required to seek cancellation of the sale deed in terms of Section 31 of the Specific Relief Act, 1963. Hence, ad-valorem court fee was not payable by the plaintiff.

Second submission of learned counsel for the appellant is that the Civil Court did not have jurisdiction.

In case of fraud of a serious nature, the Civil Court has the jurisdiction to entertain and adjudicate upon the dispute. Defendant no.4 has initiated recovery proceedings under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 against the defendants and tried to take away the property of the plaintiff firm, hence the plaintiff firm filed present suit.

In the considered opinion of this Court, even this argument is without any substance. It is well settled that in case of a fraud, the Civil Court has a jurisdiction to entertain and adjudicate upon such dispute. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court in **Mardia Chemicals Ltd. v. Union of India and others,** **AIR 2004 SC 2371.**

In view thereof, although, this Court is of the considered opinion that no doubt fraud has been committed with the appellant-bank, however, since the plaintiffs are not at fault, therefore, no relief can be

granted to the appellant-bank.

The regular second appeal is dismissed.

December 14, 2017

(ANIL KSHETARPAL)
JUDGE

nt

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No